

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Revision of the Commission's Rules to
Ensure Compatibility with Enhanced
911 Emergency Calling Systems)
)
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)
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CC Docket 94-102

LEAP WIRELESS INTERNATIONAL
AMENDMENT TO PETITION FOR E911 WAIVER

Leap Wireless International, Inc., on behalf of itself and its affiliated entities (collectively, "Leap"), hereby amends its Petition for Partial Waiver of the Commission's E-911 Phase II Implementation Milestones, filed August 27, 2001 (the "Petition"). Since long before it filed that Petition, Leap has worked diligently to identify vendors and solutions that will allow it to implement its E911 Phase II obligations as quickly and as thoroughly as possible. Leap has, however, encountered unexpected problems in obtaining adequate handsets from manufacturers, and therefore must amend its Petition to provide for a modified implementation timetable. Leap therefore seeks a partial waiver of the Commission's rules to permit Leap to adopt and implement the alternative plan outlined in this amendment to its pending Petition.

I. Waiver is Appropriate Under These Circumstances.

The Commission may waive any of its rules for good cause shown.¹ In the context of E-911 implementation, the Commission has recognized that "factors outside [a

¹ See, e.g., *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

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carrier's] control" might prevent a carriers from timely implementing E-911 Phase II.² The Commission has indicated that in such cases, particularly where "technology-related issues" or other circumstances prevent timely compliance, "individual waivers" may be appropriate.³ This policy is in keeping with the Commission's general practice: it has consistently recognized that "bringing a new product to market requires manufacturers to undertake a time-consuming series of complex steps."⁴ And therefore it has often waived compliance deadlines for its licensees when manufacturers cannot make products available in time.⁵

In light of the important safety goals of Enhanced 911, the Commission has stated that it will grant only waivers that are "focused and limited in scope, and with a clear path to full compliance."⁶ The Commission also has indicated that carriers must document the "concrete steps" a carrier has made and will make towards compliance.⁷

Leap's waiver request falls squarely within the standard for relief. Leap has investigated all manner of possible E-911 solutions, and has determined that it must adopt a handset-based solution; however, because of delays due to factors beyond its control, it will be unable to implement Phase II on the timetable originally set forth in its Petition. Nevertheless, as set forth in detail below, Leap continues to request only a limited waiver of the Commission's implementation milestones. Leap agrees to achieve full compliance – 95 percent of all subscribers carrying Phase II-compliant handsets – on or before the Commission's deadline.

² Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Calling Systems, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd. 17442 ¶ 45 (2000) ("*Fourth MO&O*").

³ *Id.* ¶ 43.

⁴ GARMIN International, Inc. *Order on Reconsideration*, DA 01-851 ¶ 6 (2001).

⁵ *See, e.g.*, Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment, 9 FCC Rcd. 1981 ¶¶ 76-77 (1994) (compliant cable boxes not available from equipment makers).

⁶ *Id.* ¶ 44.

⁷ *Id.*

II. LEAP'S ENTIRE NETWORK WILL BE PHASE II READY BY SEPTEMBER 30, 2002

Since filing its Petition, Leap has proceeded to modify and prepare its network as needed to accommodate its planned handset-based E911 solution. Specifically, Leap has proceeded to procure and install the necessary network software upgrades, and is moving forward with its efforts to acquire access to and integrate a Mobile Positioning Center ("MPC") and Position Determining Equipment ("PDE").

Leap has already acquired and installed the required software upgrades in all of its markets served by Lucent network equipment. Leap expects the required software upgrades to be installed in its Nortel markets according to the schedule set forth in its Petition, so that it will complete these upgrades by September 30, 2002. In its Ericsson markets, Leap has experienced some slight delays. Its network management tool, licensed from a third party, will not be ready to interface with the Ericsson 8.6 software version until May, after which point the integrated software load must be field tested, and then rolled out in its various markets. However, Leap still expects to complete the upgrades in all of its Ericsson markets by September 30, 2002.

Leap has determined that it will outsource its MPC and PDE functionality. It has selected a vendor – Telecommunications Systems, Inc. ("TCS"), formerly known as XYPoint. TCS was chosen because of its proven ability to provide reliable E911 solutions, and because Leap is currently using TCS in connection with its E911 Phase I compliance. Right now, Leap is actively working with TCS to address implementation-related issues and to finalize the contractual relationship. Leap expects to have MPC and PDE infrastructure available to service all of its markets by September 30, 2002. This infrastructure, together with the aforementioned software upgrades, will allow Leap's network to be fully E911 Phase II capable by September 30, 2002.

III. LEAP NEEDS ADDITIONAL TIME TO ROLL OUT ALI-CAPABLE HANDSETS

In general, Global Positioning System ("GPS") - enabled CDMA handsets are being introduced much later than Leap anticipated in August, 2001 when it filed its Petition. Leap has held extensive discussions on this topic with every major CDMA handset manufacturer. At the 2002 CTIA convention alone, Leap held meetings with 11 different handset manufacturers. However there is only one GPS CDMA handset model currently available for purchase by Leap. Moreover, it appears that when additional GPS CDMA handsets are eventually introduced into the wireless marketplace, they will be priced higher than Leap originally expected, and will not have features, other than GPS functionality, that would help to justify this price in the eyes of consumers, and thus to engender widespread acceptance.

Moreover, in addition to the general lack of E911-enabled handsets that is a problem faced by the entire CMRS industry, Leap is in a particularly difficult position. Leap is a smaller carrier with no leverage over manufacturers. As a result, Leap cannot place a large enough order to persuade manufacturers to produce the phones that Leap would like to sell. Therefore Leap cannot acquire GPS CDMA handsets until the manufacturers make them generally available.

Likewise, Leap's customer-friendly service model may in some ways prove a liability with respect to E911 compliance. Leap does not require customers to pass credit checks, and offers service on a month-to-month basis without requiring customers to enter into long-term service contracts. Because its customers do not commit to long-term contracts, Leap cannot subsidize handsets to the same extent as most other carriers.

Notwithstanding the difficulties they face, Leap's engineers, marketing staff and business people are striving to become Phase II compliant. But despite their efforts and continued contacts with CDMA handset manufacturers, the forecasts that Leap made in 2001

need to be adjusted: Leap now believes it will be unable to meet the implementation schedule that it believed would be possible last August.

As mentioned, only one GPS CDMA handset model is currently available for sale to Leap, and Leap does not expect that any additional models will become commercially available until the third quarter of 2002. Unfortunately, the handset that is now available is very expensive in relation to other models Leap offers to its customers, and it lacks incremental features that are likely to induce consumer acceptance over less expensive non-GPS handsets. Still, Leap has recently taken delivery of samples of this handset for testing. Assuming that there are no unforeseen technical problems with the use of this handset on Leap's networks, Leap plans to begin selling the handset in time to meet the initial implementation deadline set forth in its original Petition – on or before June 30, 2002.

As Leap stated in its original petition and elsewhere, it is very difficult to predict the rate at which consumers will accept the new handsets. However, data available to Leap indicates that its customers' acceptance of GPS handsets will not be great. The vast majority of Leap's customers purchase the least expensive handsets it offers – they typically decline to pay a premium even to receive obvious benefits such as smaller phone size or enhanced features. In addition, focus groups conducted by Leap indicate that Leap's customers have little interest in paying more money for a handset with GPS functionality for safety purposes.

For these reasons, Leap has always believed that it will not be able to make 25 percent of new activations ALI-capable until a moderately-priced handset comes on the market. Last August Leap believed a moderately-priced handset would be introduced in the third quarter of 2002, but it now appears that a moderately-priced handset will not be introduced until the

second quarter of 2003. Leap therefore cannot expect to make 25 percent of activations ALI-compliant until some time after that date; not before the end of that quarter – June 30, 2003.

Leap expects to make the 50 percent milestone within several months after it meets the 25 percent milestone, as the cost of GPS handsets falls, and their features improve. Leap therefore expects to have 50 percent of new activations ALI-compliant by October 30, 2003.

As Leap's Fall inventories sell down over the 2003 Christmas buying season, it will increasingly focus its inventory on GPS capable phones. However, it will take some additional time for Leap to sell the last of its non-GPS handset inventory. Leap expects to sell through all of its non-GPS stock, and thus to achieve 100 percent new-activation compliance, by March 31, 2004.⁸

Finally, and perhaps most importantly, Leap agrees that 95 percent of its customers will be using ALI-compliant handsets by the FCC's final deadline, 12/31/05.

In summary, then, Leap now requests that the FCC permit Leap to implement Phase II capabilities according to the following revised implementation schedule:

Network Implementation:

Software upgrades:

Lucent Markets:	Already implemented
Nortel Markets:	September 30, 2002
Ericsson Markets:	September 30, 2002
PDE and MPC availability:	September 30, 2002

Handset Implementation:

Introduce ALI handsets:	June 30, 2002
25% new activations:	June 30, 2003
50% new activations:	October 30, 2003

⁸ In reality, inherent delays and glitches in the supply and activation chain dictates that for some time Leap may actually realize something more like 99 percent compliance, as the odd customer who buys a phone in December may wait until June to activate it, or similar circumstances.

100% new activations:
95% of customers ALI-capable:

March 31, 2004⁹
December 31, 2005

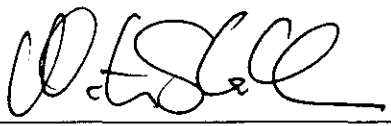
Leap notes that these dates are forecasts of circumstances over which Leap has little or no control. Among these circumstances are the dates on which manufacturers introduce GPS handsets, the features those handsets include, the prices the manufacturers charge, and whether customers prove willing to buy those handsets. Leap will do its best to implement E911 Phase II as quickly as possible, but its ability to do so depends to a large extent upon circumstances outside its control.

IV. CONCLUSION

For these reasons, Leap hereby amends its Petition and respectfully requests that the Commission grant a partial waiver of Section 20.18 of its rules in order to allow Leap to follow the implementation timetable outlined herein.

Respectfully Submitted,

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⁹ See *supra* note 8.

